

AMENDED IN SENATE MAY 15, 2007

AMENDED IN SENATE MAY 2, 2007

AMENDED IN SENATE APRIL 23, 2007

SENATE BILL

No. 614

**Introduced by Senator Simitian
(Coauthors: Senators Alquist and Torlakson)**

February 22, 2007

An act to amend Sections 17250.20, 17250.30, 17250.35, 81700, and 81702 of, and to repeal Sections 81700.5 and 81700.7 of, the Education Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 614, as amended, Simitian. Public works: design-build contracts.

(1) Existing law authorizes, until January 1, 2010, a school district governing board to enter into a design-build contract, as defined, in which factors in addition to price and cost may be considered in awarding a contract for the design and construction of a school facility that exceeds \$10,000,000.

This bill instead would authorize a school district governing board to enter into those contracts that exceed \$2,000,000.

(2) Existing law authorizes the design-build entity to withhold retention proceeds in excess of the percentage specified in the contract between the school district and the design-build entity from any payment made by the design-build entity to the subcontractor if the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond.

This bill would delete the requirement that the written notice be provided prior to or at the time the bid is requested.

(3) Existing law requires each contract with a design-build entity to provide that no construction or alteration of any school building is to commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services.

This bill would define “plans” for these purposes to include plans for foundations based on design criteria provided by the architect or structural engineer of the design-build entity that are received by the Department of General Services prior to the receipt of completed building plans.

(4) Existing law authorizes the governing boards of 3 specified community college districts and up to 5 community college facility construction projects selected by the Chancellor of the California Community Colleges to enter into a design-build contract, as defined, until January 1, 2011, in which factors in addition to price and cost may be considered in awarding a contract for the design and construction of a community college facility for an amount that exceeds \$10,000,000.

This bill instead would make those provisions applicable to any community college district governing board and would authorize the governing board of a community college district to enter into those contracts that exceed \$2,000,000.

(5) This bill would provide that, *except as provided in the bill, nothing in the bill does not affect certain matters relating to subcontracting restrictions and employer-employee relations is to be construed to affect the application of any other law.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17250.20 of the Education Code is
- 2 amended to read:
- 3 17250.20. Upon making a determination by a school district
- 4 governing board that it is in the best interest of the school district,
- 5 the governing board may enter into a design-build contract for
- 6 both the design and construction of a school facility if that
- 7 expenditure exceeds two million dollars (\$2,000,000) if, after
- 8 evaluation of the traditional design, bid, and build process of school

1 construction and of the design-build process in a public meeting,
2 the governing board makes written findings that use of the
3 design-build process on the specific project under consideration
4 will accomplish one of the following objectives: reduce comparable
5 project costs, expedite the project's completion, or provide features
6 not achievable through the traditional design-bid-build method.
7 The governing board also shall review the guidelines developed
8 pursuant to Section 17250.40 and shall adopt a resolution approving
9 the use of a design-build contract pursuant to this article prior to
10 entering into a design-build contract.

11 SEC. 2. Section 17250.30 of the Education Code is amended
12 to read:

13 17250.30. (a) Any design-build entity that is selected to design
14 and build a project pursuant to this chapter shall possess or obtain
15 sufficient bonding to cover the contract amount for nondesign
16 services, and errors and omissions insurance coverage sufficient
17 to cover all design and architectural services provided in the
18 contract. This chapter does not prohibit a general or engineering
19 contractor from being designated the lead entity on a design-build
20 entity for the purposes of purchasing necessary bonding to cover
21 the activities of the design-build entity.

22 (b) Any payment or performance bond written for the purposes
23 of this chapter shall use a bond form developed by the Department
24 of General Services pursuant to subdivision (g) of Section 14661
25 of the Government Code. The purpose of this subdivision is to
26 promote uniformity of bond forms to be used on school district
27 design-build projects throughout the state.

28 (c) (1) All subcontracts that were not listed by the design-build
29 entity in accordance with Section 17250.25 shall be awarded by
30 the design-build entity.

31 (2) The design-build entity shall do all of the following:

32 (A) Provide public notice of the availability of work to be
33 subcontracted.

34 (B) Provide a fixed date and time on which the subcontracted
35 work will be awarded.

36 (3) Subcontractors bidding on contracts pursuant to this
37 subdivision shall be afforded the protections contained in Chapter
38 4 (commencing with Section 4100) of Part 1 of Division 2 of the
39 Public Contract Code.

(4) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the school district and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

SEC. 3. Section 17250.35 of the Education Code is amended to read:

17250.35. (a) The minimum performance criteria and design standards established pursuant to this chapter by a school district for quality, durability, longevity, and life-cycle costs, and other criteria deemed appropriate by the school district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the school district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

1 (b) The school district governing board shall be the employer
2 of the project inspector. The project inspector shall be fully
3 independent from any member of the design-build entity and shall
4 not have an affiliation with any member of the design-build entity
5 or any of the project subcontractors. The project inspector shall
6 act under the direction of either the Director of General Services
7 or a competent, qualified agent of the school district.

8 (c) The total price of the project shall be determined either upon
9 receipt of the lump-sum bids as set forth in paragraph (1) of
10 subdivision (c) of Section 17250.25, or by completion of the
11 process pursuant to paragraph (2) of subdivision (c) of Section
12 17250.25.

13 (d) (1) Each contract with a design-build entity shall provide
14 that no construction or alteration of any school building pursuant
15 to this section shall commence prior to the receipt of the written
16 approval of the plans, as to the safety of design and construction,
17 from the Department of General Services.

18 (2) For purposes of this subdivision, “plans” includes plans for
19 foundations based on design criteria provided by the architect or
20 structural engineer of the design-build entity that are received by
21 the Department of General Services prior to the receipt of
22 completed building plans.

23 (3) Compliance with paragraph (1) shall be deemed to be in
24 compliance with Sections 17267 and 17297.

25 (e) The design-build entity shall be liable for building the facility
26 to specifications set forth in the design-build contract in the absence
27 of contractual language to the contrary.

28 SEC. 4. Section 81700 of the Education Code is amended to
29 read:

30 81700. (a) It is the intent of the Legislature to enable
31 community college districts to utilize safe and cost effective options
32 for building and modernizing community college facilities. The
33 Legislature has recognized the merits of the design-build
34 procurement process in the past by authorizing its use for projects
35 undertaken by the University of California, specified local
36 government projects, including school districts, and state office
37 buildings.

38 (b) The Legislature also finds and declares that community
39 college districts utilizing a design-build contract require a clear
40 understanding of the roles and responsibilities of each participant

1 in the design-build process. The benefits of a design-build contract
2 project delivery system include an accelerated completion of the
3 projects, cost containment, reduction of construction complexity,
4 and reduced exposure to risk for the community college district.
5 The Legislature also finds that the cost effective benefits to the
6 community college districts are achieved by shifting the liability
7 and risk for cost containment and project completion to the
8 design-build entity.

9 (c) It is the intent of the Legislature to provide an optional,
10 alternative procedure for bidding and building community college
11 construction projects.

12 (d) In addition, it is the intent of the Legislature that the full
13 scope of design, construction, and equipment awarded to a
14 design-build entity under this chapter shall be authorized in a single
15 funding phase. The funding phase may be authorized concurrently
16 with, or separately from, the phase that authorizes the creation of
17 the performance criteria and concept drawings.

18 (e) It is the intent of the Legislature that design-build
19 procurement as authorized by this chapter shall not be construed
20 to extend, limit, or change in any manner the legal responsibility
21 of public agencies and contractors to comply with existing laws.

22 SEC. 5. Section 81700.5 of the Education Code is repealed.

23 SEC. 6. Section 81700.7 of the Education Code is repealed.

24 SEC. 7. Section 81702 of the Education Code is amended to
25 read:

26 81702. (a) Upon a determination by a community college
27 district governing board that it is in the best interest of the
28 community college district, the governing board may enter into a
29 design-build contract for both the design and construction of a
30 community college facility if that expenditure exceeds two million
31 dollars (\$2,000,000) if, after evaluation of the traditional design,
32 bid, and build process of community college facility construction
33 and of the design-build process in a public meeting, the governing
34 board makes written findings that use of the design-build process
35 on the specific project under consideration will accomplish one of
36 the following objectives: reduce comparable project costs, expedite
37 the project's completion, or provide features not achievable through
38 the traditional design-bid-build method. The governing board shall
39 also review the guidelines developed pursuant to Section 81706
40 and shall adopt a resolution approving the use of a design-build

1 contract pursuant to this chapter prior to entering into a
2 design-build contract.

3 (b) No state funds appropriated for a design-build capital outlay
4 project may be expended until the Department of Finance and the
5 State Public Works Board have approved performance criteria, or
6 performance criteria and concept drawings, for the project to be
7 financed from the appropriation for capital outlay.

8 ~~SEC. 8. This act shall not affect (a) the existing restrictions on~~
9 ~~subcontracting by a public agency imposed by any applicable civil~~
10 ~~service or merit system or (b) the obligation of any public agency~~
11 ~~pursuant to state statute or local ordinance to meet and confer with~~
12 ~~any labor organization concerning any matter within the existing~~
13 ~~statutorily provided scope of representation.~~

14 *SEC. 8. Except as provided in this act, nothing in this act shall*
15 *be construed to affect the application of any other law.*